

Final

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF)
WESTERN FRUIT EXPRESS COMPANY,)
)
Appellant,)
)
v.)
)
PUGET SOUND AIR POLLUTION)
CONTROL AGENCY,)
)
Respondent.)

PCHB No. 77-21

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

This matter, an appeal from the issuance of a \$250 civil penalty for the alleged violation of Section 9.03(b) of respondent's Regulation 1, came before the Pollution Control Hearings Board at a formal hearing on June 17, 1977 in Seattle, Washington. Board members Chris Smith and Dave J. Mooney were in attendance. David Akana presided.

Appellant appeared by and through its attorney, Gerald A. Troy; respondent appeared by and through its attorney, Keith D. McGoffin.

Having heard the testimony, having examined the exhibits, and being fully advised, the Pollution Control Hearings Board makes these

1 FINDINGS OF FACT

2 I

3 Pursuant to RCV' 43.21B.260 respondent has filed a certified copy
4 of its Regulation 1 and amendments thereto which we notice.

5 II

6 Appellant Western Fruit Express Company, a subsidiary of Burlington
7 Northern, Inc., is located in Seattle. Its business activities entail
8 providing mechanical refrigerator railroad car systems, including heating
9 and cooling systems, and related services by contract, for Burlington
10 Northern, Inc., a railroad company. Also, as a part of its activities
11 appellant inspects the refrigerator cars transported, but not owned or
12 leased, by Burlington Northern. In its inspection of the latter class
13 of cars, referred to as "foreign" cars, appellant's employees check the
14 temperature, fuel, oil, water and vents, providing services as is required
15 to ensure the maintenance of a proper temperature. If a problem arises
16 with respect to a refrigerator car, appellant would "do what we could to
17 eliminate the problem." If the problem involved maintenance of a car,
18 it was seen as the owner's responsibility, however.

19 III

20 On January 18, 1977 while driving in the City of Everett, respondent's
21 inspector saw a plume of blue smoke rising in the atmosphere. Upon further
22 investigation, the inspector discovered that the plume originated from
23 refrigerator car number FG CX 12078 which was being prepared for travel to
24 British Columbia by Burlington Northern. The inspector made an observation
25 of the emission commencing at 9:29 a.m. and recorded 100 percent opacity
26 for ten consecutive minutes. He also took several photographs.

27 FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

1 The inspector eventually contacted appellant's agent in Seattle, who
2 after being told of the problem, said he would "do what we could to
3 take care of it as soon as possible." The agent also directed that
4 the notice of violation be mailed to him in Seattle. The agent thereafter
5 called a Burlington Northern employee in Everett to ask him to shut
6 the unit off. The unit was shut off and the car continued to its desti-
7 nation. For the foregoing emission, appellant was assessed a \$250
8 civil penalty which was timely appealed to this Board.

9 IV

10 Refrigerator car number FGEX 12078, a "foreign" car, is owned by
11 Fruit Growers Express Company of a Washington, D. C. address. The car,
12 transported by Union Pacific Railroad, originated in Louisiana and
13 arrived in Spokane, Washington at 7:30 a.m. on January 17, 1977 at which
14 time Burlington Northern took over its control. The product in the car,
15 bottled rum, was to be maintained at a temperature of about 60°F. Upon
16 arrival, the refrigerator engine was not operating and the car temperature
17 was at 42°F. The engine was started by appellant's employee with no
18 apparent problem or smoke. At 2:00 p.m. the refrigerator car was again
19 inspected at which time a temperature of 50°F. was recorded and all
20 appeared normal.

21 At all times material hereto, appellant had established and
22 followed a reasonable inspection system for maintenance of temperature
23 control.

24 V

25 The engine on a refrigerator car, such as that on FGEX 12078, is
26 a two-speed (high/low) diesel engine. Emissions from this type of engine

27 FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

1 regularly occur when the engine speed switches from low to high after
2 running at low for a long period of time. Such emissions would be visible
3 for a short period of time. The emissions observed in the instant case
4 lasted well beyond the time of the emissions which would have resulted
5 from a change in engine speed and cannot be attributed to a design defect,
6 even given the fact that the engine may have run at low speed since it
7 left Spokane.

8 VI

9 Any Conclusion of Law which should be deemed a Finding of Fact
10 is hereby adopted as such.

11 From these Findings, the Pollution Control Hearings Board comes
12 to these

13 CONCLUSIONS OF LAW

14 I

15 The Board has jurisdiction over the persons and over the subject
16 matter of this proceeding.

17 II

18 Appellant's responsibility, it has contended, is only to maintain
19 the temperature of the railroad car as the products require, regardless
20 of whether smoke results. We find that operation of the engine to main-
21 tain temperature control, over which appellant had control, resulted in
22 the emissions observed by respondent's inspector. Thus, appellant itself
23 can be held to have caused or allowed the emission of an air contaminant
24 on January 18, 1977 in violation of Section 9.03(b)(2) of Regulation 1.

25 III

26 The observed emission resulted from a cracked cylinder head, which

27 FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

1 was an unavoidable and unforeseeable breakdown of equipment. Appellant
2 did not comply with the provision of Section 9.16 which would excuse
3 such violation, however.

4 IV

5 As set forth in many cases before, violations of Regulation 1 need
6 not be "knowingly" caused or allowed. E.g., Kaiser Aluminum and
7 Chemical Corp. v. PSAPCA, PCHB 1074; Kaiser Aluminum and Chemical Corp.
8 v. PSAPCA, PCHB 1017.

9 V

10 A \$250 civil penalty was properly assessed pursuant to Section 3.29
11 of Regulation 1 and should be affirmed.

12 VI

13 Any Finding of Fact which should be deemed a Conclusion of Law
14 is hereby adopted as such.

15 From these Conclusions, the Board enters this

16 ORDER

17 The \$250 civil penalty is affirmed.

18 DATED this 11th day of July, 1977.

19 POLLUTION CONTROL HEARINGS BOARD

20
21 Did not participate
22 W. A. GISSBERG, Chairman

23 Dave J. Mooney
24 DAVE J. MOONEY, Member

25 Chris Smith
26 CHRIS SMITH, Member

27 FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER